INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute and regulations involved	2
Statement	2
Specification of errors to be urged	5
Reason for granting the writ	6
Appendix	8

CITATIONS

Cases:	
Carpenter v. *White*, 80 F. 2d 145, certiorari denied, 297 U. S. 720	7
City Bank Farmers Trust Co., v. *Hoey*, 125 F. 2d 577	6
Koppers Coal & Transportation Co. v. *United States*, 107 F. 2d 706	6
Niagara Hudson Power Corp. v. *Hoey*, 117 F. 2d 414	6
State Street Trust Co. v. *Hassett*, 134 F. 2d 156	6
United States v. *Merchants Nat. Trust & Savings Bank*, 101 F. 2d 399	6
Weil v. *United States*, 115 F. 2d 999, certiorari denied, 313 U. S. 574	6
Statutes:	
National Industrial Recovery Act, c. 90, 48 Stat. 195, Sec. 212	9
Pub. Res. No. 36, c. 333, 49 Stat. 431	9
Revenue Act of 1926, c. 27, 44 Stat. 9:	
Sec. 800	8
Schedule A-3	8
Schedule A-8	9
Schedule A-9	9
Revenue Act of 1942, c. 619, 56 Stat. 957, Sec. 506	7
Miscellaneous:	
Treasury Regulations 71 (1932 ed.):	
Art. 34	10
Art. 120	10

546131—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered in the above cause, affirming the judgment of the District Court of the United States for the Eastern District of Washington, Northern Division.

OPINIONS BELOW

The opinion of the district court (R. 55–76), and the opinion of the circuit court of appeals (R. 93–95) are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on May 24, 1943 (R. 95). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Respondent (a national bank) and a state bank consolidated under the charter of respondent by written agreement therefor, ratified by their respective shareholders and approved by the Comptroller of the Currency in accordance with the National Banking Act. Legal title to all corporate securities and realty held in the state bank's name, in its own right and in fiduciary capacities, was thereby transferred to respondent. Did the transaction involve a taxable transfer of the securities and realty under the stamp-tax provisions of the Revenue Act of 1926, as amended?

STATUTE AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*, pp. 8–10.

STATEMENT

Respondent, known prior to December 28, 1935 as First National Bank of Seattle, entered into a written agreement on November 26, 1935, with the Spokane and Eastern Trust Company, hereinafter called the state bank, signed by the di-

rectors of each, providing for the consolidation of the two banks under respondent's charter and the corporate name of Seattle-First National Bank. The agreement provided that (R. 49–50)—"This consolidation shall become effective when it shall have been ratified and confirmed by the affirmative vote of the holders of at least two-thirds of the shares of stock, at the time outstanding, of" both banks, "and the Comptroller of the Currency * * * shall have issued his formal certificate under the seal of his office approving such consolidation."

The state bank owned real estate, including its banking premises, as well as corporate stocks and bonds, to all of which it held legal title as a part of its corporate assets. It also held in trust certain stocks and bonds, the legal title to which was vested in it as trustee, executor, administrator, guardian, or in other fiduciary capacities. (R. 77.)

Section 5 of the agreement provided, in part, as follows (R. 29):

> All assets of each association at the date of consolidation shall pass to and vest in the consolidated association, and the consolidated association shall be responsible for all of the liabilities of every kind and description of each of the consolidating associations.

The shareholders met and ratified the agreement, and on December 28, 1935, Acting Comptroller of the Currency Awalt issued a certificate

of approval, reciting that it appeared the directors and shareholders of both banks had complied with the Act of Congress, approved November 7, 1918, as amended, and therefore the banks had been consolidated under the charter of the First National Bank of Seattle and under the corporate title of Seattle-First National Bank, with an authorized capital of $8,000,000 (R. 16–18).

The findings in the pretrial order, expressly approved by counsel for the respective parties, state (R. 14):

> That the foregoing proceedings were authorized by Section 34 (a), Title 12, USCA, and resulted in the consolidation of the trust company into the plaintiff Seattle-First National Bank pursuant to the above statute, and accordingly there was effected by the agreement of November 26, 1935, and the shareholders' ratification thereof, followed by approval of the Comptroller of the Currency, a transfer of legal title to all corporate securities and real estate, legal title to which was formerly held in the name of the Spokane and Eastern Trust Company, either in its individual capacity or as a fiduciary in various capacities. No documentary stamps were purchased or affixed with respect to the transfer of legal title to such corporate securities and realty. Subsequently, a deputy collector examined the records of the bank, and as a

result, documentary stamps in the amount of $1,631.48 were purchased and affixed to the appropriate records.

This suit was brought on October 17, 1941, to recover the above tax, $1,631.48,[1] and penalty of $100 with interest. The United States filed an answer admitting parts of the complaint. A pretrial hearing resulted in the entry of an order embodying material findings of fact (R. 12–15), and the introduction of documentary exhibits, upon which the case was tried. The district court made further findings which are a repetition of the first ten paragraphs of the complaint. It entered judgment for respondent for the tax of $1,631.48 (R. 82), which was affirmed by the circuit court of appeals.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In failing to hold that the transactions involved deliveries or transfers by the State Bank to respondent of the real estate and securities, owned outright, as well as those to which it held mere legal title in fiduciary capacities, within the stamp tax provisions of the Revenue Act of 1926, as amended.

[1] The $1,631.48 tax comprised $500 paid with respect to the transferred realty (R. 5, 19–20), $457.60 with respect to securities formerly owned by the State Bank in its own right (R. 5, 21–22), and $673.88 with respect to securities held in trust (R. 5).

2. In holding that the transactions involved were not subject to the stamp-tax provisions of the Revenue Act of 1926, as amended.

3. In affirming the judgment of the district court.

REASON FOR GRANTING THE WRIT

The decision below is in conflict with *City Bank Farmers Trust Co.* v. *Hoey*, 125 F. 2d 577 (C. C. A. 2), and *State Street Trust Co.* v. *Hassett*, 134 F. 2d 156 (C. C. A. 1), in each of which it was held that a taxable transfer occurred where a bank or trust company, which had legal title to various securities, combined with another bank or trust company and the title to those securities passed to the new corporation.[2] The court below adhered to its earlier decision in *United States* v. *Merchants Nat. Trust & Savings Bank*, 101 F. 2d 399, which the First and Second Circuits, in turn, had refused to follow in the foregoing cases, and the court recognized the conflict, saying (R. 94):

> * * * The Court of Appeals of the Second Circuit in *City Bank Farmers Trust Co.* v. *Hoey*, 125 F. 2d 577, has reached a different conclusion and apparently the First Circuit has also, *State Street Trust Co.* v. *Hassett*, 134 F. 2d 156, so that if we

[2] Similar results have been reached in *Weil* v. *United States*, 115 F. 2d 999 (C. C. A. 2), certiorari denied, 313 U. S. 574; *Niagara Hudson Power Corp.* v. *Hoey*, 117 F. 2d 414 (C. C. A. 2); *Koppers Coal & Transportation Co.* v. *United States*, 107 F. 2d 706 (C. C. A. 3).

are wrong the government is in a favorable position to ask that we be set right.

Although Section 506 of the Revenue Act of 1942, c. 619, 56 Stat. 957, goes far toward clarifying the issue for the future, the question is nevertheless one of present importance since substantial amounts of taxes have been collected for 1941 and prior years which probably will be the subject of further litigation until the matter is authoritatively settled.[3]

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

AUGUST 1943.

---

[3] Although the square conflict which exists as to the securities probably does not extend to the real estate, the questions are so closely related that if certiorari is granted the writ should cover the entire case. As to the real estate, compare *Carpenter* v. *White*, 80 F. 2d 145, 146 (C. C. A. 1), certiorari denied, 297 U. S. 720.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. * * *

SCHEDULE A.—STAMP TAXES

3. [as amended by Section 723 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169] Capital stock (and similar interest), sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subdivision 2, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any

paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not) * * *.

8. [as added by Section 725 of the Revenue Act of 1932] Conveyances: Deed, instrument, or writing, delivered on or after the 15th day after the date of the enactment of the Revenue Act of 1932 and before July 1, 1934 (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *.

9. [as added by Section 724 (a) of the Revenue Act of 1932] Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each $100 of face value or fraction thereof, 4 cents * * *.

Schedule A–9 was extended by Section 212 of the National Industrial Recovery Act, c. 90, 48 Stat. 195, and by Pub. Res. No. 36, c. 333, 49 Stat. 431.

Treasury Regulations 71 (1932 ed.):

ART. 34. *Sales or transfers subject to tax.*—The following are examples of transactions subject to the tax:

* * * * *

(b) The transfer of stock to or by trustees.

* * * * *

(r) Upon a merger, the transfer of stock owned by a corporation which is merged into another corporation from the name of the first to the name of the second corporation, such a transfer being effected by the act of the parties and not wholly by operation of law.

* * * * *

(t) The transfer of legal title to stock irrespective of whether or not the transferee receives any beneficial interest therein, except as provided in article 35 (k).

(u) Transfer of stock from old firm to new firm succeeding to its business where personnel is different.

* * * * *

ART. 120. *Basis of tax.*—The tax accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to, the bonds, regardless of the time or manner of the delivery of the bonds or agreement or memorandum of sale. The provisions of articles 34 to 39, both inclusive, of these regulations, relating to sales or transfers of stock, are controlling also in respect of sales or transfers of bonds, in so far as consistent with the provisions of Schedule A–9 and in so far as not inapplicable to the matter of sales or transfers of bonds. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1943